

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA
DOCKET NO. 2017-370-E

In re Joint Application and Petition of South)
Carolina Electric & Gas Company and)
Dominion Energy, Inc., for review and)
approval of a proposed business combination)
between SCANA Corporation and Dominion)
Energy, Inc., as may be required, and for a)
prudency determination regarding the)
abandonment of the V.C. Summer Units 2 & 3)
Project and associated customer benefits and)
cost recovery plan.)

RESPONSE TO SCE&G'S AND
DOMINION ENERGY'S
OBJECTION TO PETITION TO
INTERVENE OF GORDON
MILLER

Gordon Miller (the “Stockholder Plaintiff”), a SCANA stockholder who will be adversely affected by the approval of the subject Petition, hereby files his Response to SCE&G’s and Dominion Energy’s Response in Opposition and Objection to Petition to Intervene of Gordon Miller (the “Objection”).

I. BACKGROUND

On January 3, 2018, SCANA and Dominion Energy announced they had entered into a definitive merger agreement (the “Merger Agreement”), pursuant to which SCANA stockholders will receive the unfair price of just 0.6690 shares of Dominion stock in exchange for their outstanding shares of SCANA common stock held as of the effective date. Pursuant to the Merger Agreement, SCE&G, a wholly-owned subsidiary of SCANA, and Dominion (collectively, the “Petitioners”) were required to file a petition with the South Carolina Public Service Commission (the “Commission”) on or before January 12, 2018.

On January 12, 2018, the Petitioners filed a Joint Application and Petition of SCE&G and Dominion Energy for Review and Approval of a Proposed Business Combination Between SCANA and Dominion Energy, as May Be Required, and for a Prudency Determination Regarding the Abandonment of the V.C. Summer Units 2 & 3 Project and Associated Customer Benefits and Cost Recovery Plans (the “Petition”). The Petition seeks a ruling from the Commission (i) approving the Merger with no material changes to the terms of the Merger; (ii) making a finding that the Merger is in the public interest; or (iii) making a finding that there is an absence of harm to South Carolina rate payers as a result of the Merger.

Under the terms of the Merger Agreement, the Merger will not close unless the Commission approves the Petition. In light of this fact, Stockholder Plaintiff can protect

himself from the unfair Merger by successfully opposing the Petition. So Stockholder Plaintiff filed a Petition to Intervene in this matter on April 12, 2018.

II. STOCKHOLDER PLAINTIFF HAS SATISFIED THE COMMISSION'S RULES CONCERNING INTERVENTION

The Commission's rules unambiguously list the requirements that must be met by an intervenor. Under Rule 103-825(A)(3), a petition to intervene must concisely set forth: (a) facts from which the nature of the petitioner's alleged right or interest can be determined; (b) the grounds of the proposed intervention; and (c) the position of the petitioner in the proceeding. Stockholder Plaintiff's Petition to Intervene includes this information. *See* Petition to Intervene.

The Petition to Intervene includes facts that show Stockholder Plaintiff has a substantial interest in this matter, as well as the grounds for his proposed intervention. Specifically, the Petition to Intervene states that Stockholder Plaintiff "will be directly, significantly, and detrimentally impacted if the Commission approves the Petition" given that the Merger "significantly undervalues the Company." Petition to Intervene at 1-2. And, as shown above, Stockholder Plaintiff can protect himself from the unfair Merger by successfully opposing the Petition because the Commission's approval of the Petition is a condition-precedent for the Merger.

The Petition to Intervene also concisely and specifically identifies Stockholder Plaintiff's position in this proceeding. Specifically, the Petition to Intervene explains that the Stockholder Plaintiff intends to oppose the Petition by offering "significant and unique expertise to this matter," will present the Commission with information "regarding the fairness of the Petition and the Proposed Acquisition," and will "present the Commission with information regarding how the actions by the Commission could impact Dominion Energy's responsibility to pay SCANA the \$240 million termination fee if Dominion

Energy terminates the Proposed Acquisition.” Petition to Intervene at 2. No other party in this matter is capable of providing such information. *Id.* Thus, Stockholder Plaintiff’s Petition to Intervene satisfied the requirements of 103-825(A)(3) and Stockholder Plaintiff should be permitted to intervene.

III. SCE&G’s ARGUMENTS ARE LARGELY BASED ON INAPPOSITE LAW AND IGNORE RELEVANT FACTS

Petitioners’ primary argument is that Stockholder Plaintiff does not have standing to intervene because he lacks a personal interest in this matter. Objection at 1-4. But Petitioners’ argument fails for several reasons. First, the argument is largely a red herring. Petitioners borrow language and standards from inapposite cases, none of which discuss intervention under Rule 103-825.¹ While Stockholder Plaintiff almost certainly has standing under the standards presented by Petitioners given his timely-filed Petition to Intervene, his significant personal and legally-protected interest in this matter, and the South Carolina Courts’ policy of liberally granting intervention, the issue here is whether Stockholder Plaintiff satisfies the requirements to intervene under Rule 103-825. As shown above, he does.

Petitioners’ standing argument also fails because it ignores highly relevant facts that provide the basis for Stockholder Plaintiff’s significant personal interest in this matter. Again, Stockholder Plaintiff has a significant personal interest in whether the Petition is

¹ See, e.g., *Ex Parte Gov’t Employee’s Ins. Co. v. Goethe*, 373 S.C. 132, 644 S.E.2d 699 (2007) (analyzing whether intervention in a family court proceeding was proper under SCRCP 24); see also, e.g., *Duke Power Co. v. S.C. Pub. Serv. Comm’n*, 284 S.C. 81, 96, 326 S.E.2d 395, 404 (1985) (analyzing whether ratepayers had standing to present a case “*before the courts of this State*”); *Smiley v. S.C. Dept. of Health and Env’tl. Control*, 374 S.C. 326, 649 S.E.2d 31 (2007) (applying standing requirements for people challenging approval of permits and actually finding that a party had standing where the party’s own personal interest was an altered jogging route).

approved because approval is a condition precedent for the unfair Merger. Stockholder Plaintiff can thus protect himself from the Merger by successfully opposing the Petition. Petitioners completely ignore these facts, failing to even acknowledge a connection between the Petition and the Merger. *See generally* Objection. By failing to incorporate this critical set of facts, Petitioners' analysis concerning Stockholder Plaintiffs' personal interest in this matter is rendered inconsequential.

Petitioners also argue that the Commission cannot grant intervention because it lacks jurisdiction to grant the relief sought by Stockholder Plaintiff. Objection at 3-4. Petitioners are incorrect. Stockholder Plaintiff seeks to have the Commission deny the Petition, and will provide the Commission with information concerning the fairness of the Petition and the underlying Merger to accomplish this goal. Petition to Intervene at 2. The Commission clearly has the jurisdiction to deny the Petition, and thus has the jurisdiction to grant the relief sought by Stockholder Plaintiff.

SCE&G does identify certain Directives from the Commission that deny intervention. Objection at 2, 4. But these Directives are readily distinguishable. All of the Directives involved the same proposed intervenor (Mr. Joseph Wojcicki), did not involve a merger or acquisition, and, unlike here, involved an intervenor who failed to show a connection between the petition at issue and himself. *See, e.g.*, ID. No. 222498, dated March 10, 2010, Docket No. 2009-489-E (proposed intervenor "is not an SCE&G ratepayer, ***nor does he state any other grounds in any of his documents to show that he has a reasonable connection to this case***" and thus "fails the 'personal stake' test"); *see also, e.g.*, ID. No. 238334, dated August 15, 2012, Docket No. 2012-203-E (unlike here, there was apparently no showing by the proposed intervenor that his status as a shareholder was tied to the petition to be decided in that action).

IV. CONCLUSION

Based on the foregoing, Stockholder Plaintiff has satisfied the requirements for intervention under Rule 103-825. Nothing presented by Petitioners holds otherwise. Therefore, Stockholder Plaintiff requests that the Commission grant his Petition to Intervene.

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